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In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-416

WILLIAM R. STOUT,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio.

RICHARD F. JORDAN,
MARTIN J. MURPHY,
1414 Superior Bldg.,
Cleveland, Ohio 44114,
Attorneys for Petitioner.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-0647

TABLE OF CONTENTS.

Opinions of the Courts Below ---------- 1

Jurisdiction ---------- 2

Questions Presented ---------- 2

The Constitutional and Statutory Provisions Involved 3

Statement of the Case ---------- 4

Reasons for Granting the Writ ---------- 6

I. Whether Petitioner was denied Due Process of Law and Equal Protection of the law guaranteed him by the Fourteenth Amendment when the Governor of Ohio issued a warrant on the extradition request of the Commonwealth of Virginia without granting a Petitioner a hearing, which Petitioner had timely requested, when a procedure for such hearing in Ohio had been in effect and granted many times to alleged fugitives at the Governor's discretion ---------- 6

II. The law of Ohio provides that the introduction of the Governor's warrant and rendition documents establishes a prima facie case against the alleged fugitive shifting the burden of proof to the accused on the issues of (1) identification, (2) regularity of proceedings in the demanding State, (3) fugitive status, (4) presence of the accused in the demanding state at the time of the crime charged, (5) and good faith of the demanding authorities.

Is the foregoing provision of law violative of the Petitioner's right against self-incrimination guaranteed him by the Fifth Amendment through the Fourteenth Amendment of the Constitution of the United States? ---------- 8

Conclusion ---------- 9

Appendix:

Decision of the Court of Common Pleas (Trial Court) ---------- 10

Order of the Court of Appeals ---------- 11

Orders of the Supreme Court of Ohio ---------- 12

TABLE OF AUTHORITIES.

Cases.

Dartmouth College vs. Woodward, 4 Wheat. (U.S.) 518 (1819) ---------- 7

Gault, In Re, 387 U.S. 1 (1967) ---------- 8

Griffen vs. California, 380 U.S. 609 (1965) ---------- 8

Horne vs. Wilson (D.C. Tenn.), 306 F. Supp. 753 (1969) ---------- 9

Malloy vs. Hogan, 378 U.S. 1 (1964) ---------- 8

Constitution and Statutes.

Constitution of the United States:

Fifth Amendment ----------2, 3, 8

Fourteenth Amendment ----------2, 3, 8

18 U.S.C. 3182 ---------- 3

28 U.S.C. 1257 (3) ---------- 2

Other.

Constitutional Law, 16 AM. JUR. 2d 940 ---------- 7

Glander, *Practice in Ohio under Uniform Extradition Act*, 8 OHIO St. L. J. 235 ---------- 6

O'Keefe, *Extradition Procedure & Practice*, 24 OHIO BAR Jr. 761, 26 OHIO BAR Jr. 87 ---------- 6

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No. _____.

WILLIAM R. STOUT,
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STATE OF OHIO,
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PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio.

The Petitioner, William R. Stout, asks that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio, made and entered May 14, 1971 denying Petitioner's Motion for rehearing of his application to certify and appeal which had been previously dismissed by the Court. Accordingly, the Supreme Court of Ohio affirmed the judgment of the Ohio Court of Appeals which affirmed the judgment of the Court of Common Pleas (trial court), denying Petitioner a Writ of Habeas Corpus.

OPINIONS OF THE COURTS BELOW.

The Supreme Court of Ohio did not write an opinion in this case. Its final orders are found in Appendix pp. 12-13. The Ohio Court of Appeals for the Eighth Judicial District did not write an opinion. Its Journal Entry is contained in the Appendix, p. 11. The Court of Common Pleas of Cuyahoga County (the trial Court) issued no opinion but the journal entry containing its finding is set forth in the Appendix, p. 10.

JURISDICTION.

The final judgment of the Supreme Court of Ohio was entered on May 14, 1971. Jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. 1257(3). Petitioner claims his extradition was ordered in violation of rights, privileges and immunities secured by the Constitution of the United States.

QUESTIONS PRESENTED.

I. Whether Petitioner was denied Due Process of Law and Equal Protection of the law guaranteed him by the Fourteenth Amendment when the Governor of Ohio issued a warrant on the extradition request of the Commonwealth of Virginia without granting Petitioner a hearing, which Petitioner had timely requested, when a procedure for such hearing in Ohio had been in effect and granted many times to alleged fugitives at the Governor's discretion.

II. The law of Ohio provides that the introduction of the Governor's warrant and rendition documents establishes a prima facie case against the alleged fugitive shifting the burden of proof to the accused on the issues of (1) identification, (2) regularity of proceedings in the demanding State, (3) fugitive status, (4) presence of the accused in the demanding state at the time of the crime charged, (5) and good faith of the demanding authorities.

Is the foregoing provision of law violative of the Petitioners' right against self-incrimination guaranteed him by the Fifth Amendment through the Fourteenth Amendment of the Constitution of the United States?

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

UNITED STATES CONSTITUTION.

Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV (quoted in pertinent part):

* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES STATUTE.

Title 18, Section 3182, United States Code:

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person

demanded with having committed treason, felony or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand or the agent of such authority appointed to receive the fugitive and shall cause the fugitive to be delivered to such agent where he shall appear.

STATEMENT OF THE CASE.

On July 7, 1969 one William Roy Stout was indicted by the Grand Jury sitting in Richmond, Virginia on four counts of forgery contrary to 18.1-96 Va. Code, 1950, 1966 Cumm. Supp. On July 24, 1969 the Governor of the Commonwealth of Virginia executed rendition papers and forwarded same to the Governor of the State of Ohio requesting the extradition (interstate rendition) of William Roy Stout.

Thereafter, on August 4, 1969, the Governor of Ohio, through his authorized agent, issued his Governor's Warrant and directed it to the Sheriff of Cuyahoga County for service. On August 20, 1969, the Petitioner appeared in the Common Pleas Court of Cuyahoga County, accepted service and requested a continuance to permit him to test the warrant and rendition request. The Court continued the extradition hearing pursuant to statute, and on September 8, 1969, the Petitioner-Appellant filed his Petition for a Writ of Habeas Corpus. On October 20, 1969 the Petition came on for hearing. The State of Ohio submitted the rendition papers of the Commonwealth of Virginia and the Governor's Warrant.

Richard F. Jordan, called on voir dire, testified that he mailed a letter to the Governor's Office on June 25, 1969 requesting a hearing before the Governor issued his warrant. A hearing was never granted (R. 10). The State rested.

The Petitioner attacked the warrant on the basis it was rendered without the Governor granting a hearing after Petitioner requested same. The objection was overruled and the warrant and rendition documents were received into the evidence. No further testimony was had and the Court denied Petitioner's application for a Writ of Habeas Corpus. It is from this judgment that Petitioner timely filed his Notice of Appeal to the Eighth Judicial District Court of Appeals.

On November 18, 1970 the Court of Appeals affirmed the trial court's judgment without opinion. On December 7, 1970 the Petitioner duly filed his Notice of Appeal to the Supreme Court of Ohio, which appeal was dismissed, sua sponte, no substantial constitutional question involved, on April 7, 1971. A Motion for Re-hearing was timely filed and likewise dismissed on May 14, 1971. It is from this judgment that Petitioner seeks a Writ of Certiorari in this Court.

REASONS FOR GRANTING THE WRIT.

I. Whether Petitioner was denied due process of law and equal protection of the law guaranteed him by the Fourteenth Amendment when the Governor of Ohio issued a warrant on the extradition request of the Commonwealth of Virginia without granting a Petitioner a hearing, which Petitioner had timely requested, when a procedure for such hearing in Ohio had been in effect and granted many times to alleged fugitives at the Governor's discretion.

The basic question herein is the exact propriety of executive discretion in granting special hearings, exercised at the whim and caprice of the chief executive of a state, in processing rendition requests from sister states for alleged fugitives.

That Ohio extradition practice long has involved Governor's hearings is not subject to dispute; that the hearings are granted at the Governor's discretion is agreed; that such hearing practice supplements the Uniform Extradition Act and is not in conflict therewith is undeniable. (O'Keefe, *Extradition Procedure & Practice,* 24 OHIO BAR JR. 761, 26 OHIO BAR JR. 87, Glander, *Practice in Ohio under Uniform Extradition Act,* 8 OHIO ST. L. J. 235.) What is contested is the gravamen of this application: that due process and equal protection limit executive discretion in cases where that discretion becomes an integral part of our criminal process.

Extradition is a quasi-criminal process. The accused's application for a Writ of Habeas Corpus testing extradition is a civil process. But to deny that the entire procedure is part of our criminal system of justice, aimed at conviction of the accused and hold these proceedings apart from the prosecution of the accused is a fiction.

Due process of law is a law which hears before it

condemns, which proceeds upon inquiry and involves judgment only after trial. *Dartmouth College vs. Woodward,* 4 Wheat. (U.S.) 518 (1819). The term due process includes all steps essential to deprive a person of life, liberty or property; it includes all forms and acts essential to its application and to give it effect. The means that may be employed to accomplish the purpose of the law is the process; in other words, "process" is the mode by which the purpose of the law may be effected. *Constitutional Law,* 16 AM. JUR. 2d 940.

Obviously, there are strong arguments under the Constitution as to whether or not due process limits the Governor's discretion and requires hearing to any accused fugitive requesting same. Petitioner is part of a class of persons also entitled to equal protection under the law—that class being comprised of accused fugitives.

Only the Supreme Court can clarify the issue herein for the benefit of law enforcement agencies, the executive offices of the states charged with the responsibility of processing extradition matters, the prosecutors for the states, the bench and bar of these United States.

II. The law of Ohio provides that the introduction of the Governor's warrant and rendition documents establishes a prima facie case against the alleged fugitive shifting the burden of proof to the accused on the issues of (1) identification, (2) regularity of proceedings in the demanding state, (3) fugitive status, (4) presence of the accused in the demanding state at the time of the crime charged, (5) and good faith of the demanding authorities.

Is the foregoing provision of law violative of the Petitioner's right against self-incrimination guaranteed him by the Fifth Amendment through the Fourteenth Amendment of the Constitution of the United States?

The second compelling reason for granting certiorari is the want of uniform rules governing the burden of proof in extradition matters. Case law developed before extension of the Fourth, Fifth and Sixth Amendments of the Constitution to the States through the Fourteenth Amendment is clearly contrary to today's standards.

An accused fugitive can rely on *Malloy vs. Hogan,* 378 U.S. 1 (1964), and *In Re Gault,* 387 U.S. 1 (1967), to exercise his right against self-incrimination and remain silent. There can be no serious argument that the privilege now can be claimed in any proceeding, criminal or civil, administrative or judicial, investigatory, or adjudicatory. *Griffen vs. California,* 380 U.S. 609 (1965), prevents penalizing an accused for exercising the right. The policy of *Griffen* when applied to an extradition hearing would prevent penalizing an accused fugitive in the exercise of his right to remain silent.

However, the case law in the various states demands the accused fugitive accept a burden of proof after the state produces "rubber stamped" documents, to-wit: the Governor's warrant and its attachments. By presumption or prima facie holdings the states shift the burden to the accused. Without direct evidence the accused's identity is proven, his fugitive status, presence in the demanding state

at the time of the crime and the regularity of proceedings in the demanding state are also proven. This is tantamount to requiring the accused to testify, penalizing him for remaining silent, and disregarding his presumption of innocence by summarily ordering his rendition to the demanding state if he does not go forward and rebut the documents of the state.

Petitioner submits that the Court should review the existing hearing practice of the State of Ohio, followed by all other states, to determine if such practice is constitutional in light of the privilege against self-incrimination and the presumption of innocence.

CONCLUSION.

The question of a right to a Governor's hearing bears significance to all states. See *Horne vs. Wilson* (D.C. Tenn.), 306 F. Supp. 753 (1969), where the district court said a Governor's hearing was unnecessary but did not consider the constitutional issues raised herein. A denial of same is a denial of due process and equal protection under Petitioner's concept of the Constitution.

As significant to our concept of American justice is the second issue raised herein. The only means the law provides an accused fugitive to challenge extradition is the Writ of Habeas Corpus. Unfortunately, the law then says the accused is in a civil hearing and shifts the burden of proof back on the accused contrary to his privilege against self-incrimination and his presumption of innocence. Only this Court can place the burden of proof where it properly belongs—on the state.

Respectfully submitted,

RICHARD F. JORDAN,
MARTIN J. MURPHY,
1414 Superior Bldg.,
Cleveland, Ohio 44114,
Attorneys for Petitioner.

APPENDIX.

DECISION OF THE COURT OF COMMON PLEAS.

Case No. 93246

IN THE COMMON PLEAS COURT OF
CUYAHOGA COUNTY, OHIO

IN RE: WILLIAM STOUT

JOURNAL ENTRY OF COMMON PLEAS COURT.
(October 20, 1969.)

Petition for Writ of Habeas Corpus denied; Hearing had on Governor's Warrant, fugitive ordered turned over to agents for the State of Virginia. Stay of Execution granted pending filing notice of appeal on or before November 10, 1969, D. B. C. $5,000.00. Signed John L. Angellotta.

ORDER OF THE COURT OF APPEALS.

Case No. 30050

COURT OF APPEALS

EIGHTH DISTRICT OF OHIO, CUYAHOGA COUNTY.

STATE OF OHIO,

Plaintiff-Appellee,

vs.

WILLIAM R. STOUT,

Defendant-Appellant.

JOURNAL ENTRY.

(Filed November 18, 1970.)

This cause came on to be heard on the appeal on questions of law from the judgment of the Court of Common Pleas denying a writ of habeas corpus and was argued by counsel for the parties; and upon consideration of all of the errors assigned, the Court finds no error prejudicial to the appellant and therefore the judgment of the Court of Common Pleas is affirmed. The Court finds there was reasonable grounds for this appeal. It is ordered that appellee recover of the appellant its costs herein expended.

It is further ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution. Appellant excepts.

DANIEL H. WASSERMAN,
JOHN M. MANOS,
ALVIN I. KRENZLER,
Judges.

ORDERS OF THE SUPREME COURT OF OHIO.

No. 70-768

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
CITY OF COLUMBUS.

1971 Term

To wit: April 7, 1971.

STATE OF OHIO,

Respondent-Appellee,

vs.

WILLIAM R. STOUT,

Petitioner-Appellant.

APPEAL FROM THE COURT OF APPEALS
FOR CUYAHOGA COUNTY.

This cause, here on approval as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of Court of Appeals for Cuyahoga County for entry.

THE SUPREME COURT OF THE STATE OF OHIO

(Caption as above)

MANDATE.

To the Honorable Common Pleas Court Within and for the County of Cuyahoga, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Appeal dismissed, sua sponte, no substantial constitutional question involved.

THE SUPREME COURT OF THE STATE OF OHIO

(Caption as above)

MOTION FOR REHEARING.

It is ordered by the court that rehearing in this case is denied.

Supreme Court, U.S.
FILED
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OCTOBER TERM, 1971.

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WILLIAM R. STOUT,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

JOHN T. CORRIGAN,
Prosecuting Attorney of Cuyahoga County, Ohio,

SUMNER CANARY,
Assistant Prosecuting Attorney,
Criminal Courts Building,
1560 East 21st Street,
Cleveland, Ohio 44114,
Attorneys for Respondent.

RICHARD F. JORDAN,
MARTIN J. MURPHY,
1414 Superior Building,
Cleveland, Ohio 44114,
Attorneys for Petitioner.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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STATE OF OHIO,
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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

OBJECTION TO JURISDICTION.

Petitioner asks this Court to hold that Governors' hearings must be held in all renditicn proceedings and that the requirement that the burden is on the fugitive to disprove the facts set forth in the Governor's warrant violates the fugitive's right under the Fifth Amendment to remain silent.

These issues have consistently been determined adversely to petitioner. We see no merit in the arguments made by petitioner to warrant this Court assuming jurisdiction.

ARGUMENT.

Question I.

Here petitioner admits that hearings by a Governor prior to the issuance of an extradition warrant are held at the discretion of the Governor but argues that simply because hearings are held in some cases hearings *must* be held in all cases.

The Ohio courts will not interfere with the Governor's exercise of his discretionary power. In *State ex rel. Corbett v. Common Pleas Court* (1959), 168 O.S. 468, 155 N.E.2d 923, the Supreme Court of Ohio said at page 469:

> "The matter of issuing an extradition requisition by the Governor of Ohio is an executive function, discretionary with him, and the exercise thereof will not be interfered with by the courts."

Petitioner argues that the failure to grant a hearing is a denial of due process of law.

The general rule is stated in 31 AM. JUR. 2d, *Extradition,* Par. 50 pg. 957:

> "*Requirements as to hearing and notice.*
>
> Since extradition proceedings are summary in character and not subject to the general rules governing judicial procedure, a warrant of extradition may be issued without notice to the person charged, and without a hearing before the governor. Although the latter, in his discretion, may grant the accused a hearing, *a refusal to do so is not a violation of the right of the accused to due process of law.* It is said that to hold otherwise would often render entirely useless the constitutional provision authorizing the extradition of fugitives, and the statute passed to effectuate the provision. Moreover, where a hearing is granted, it may be conducted in any manner satisfactory to the governor, and the accused is not entitled to be represented by counsel." (Emphasis supplied.)

Due process of law is provided by the right of the fugitive to test the legality of his arrest under the Governor's warrant by applying for a writ of habeas corpus. Ohio has adopted the Uniform Extradition Act and grants this right in Section 2963.09, Ohio Revised Code.

We submit that this Court ought not intervene in a matter which has always been held to be within the discretionary powers of a governor and require the governors of the 50 states to hold hearings on *all* rendition requests.

Question II.

Here petitioner concedes that the Governor's warrant, in the habeas corpus proceedings, is prima facie evidence of all the facts that are recited therein. He argues that the law which so holds violates his Fifth Amendment right by requiring him to become a witness if he desires to contest any of the facts set forth in the extradition warrant.

Extradition proceedings stem from Art. IV, Sec. 2 of the United States Constitution and Title 18, U.S.C.A. Par. 3182. Note that the Constitution requires that the fugitive "shall on demand" be removed to the demanding state. The statute requires that the executive authority of the rendition state "shall cause him to be arrested." The Ohio statute, Sec. 2963.02, Ohio Revised Code, requires that the governor "shall have arrested and delivered—any person. . . charged with. . . felony. . ."

The proceedings before the executive authority are summary in nature and, providing that the demanding state has complied with the statutory requirements, are mandatory. Such proceedings can be attacked only by the filing of a petition for a writ of habeas corpus.

We find no case which discusses the question of whether proceedings before a governor are civil or criminal in nature. However, in view of the fact that a fugi-

tive is not entitled, as a matter of right, to a hearing, we suggest that it cannot be said that such proceedings can be said to have any of the aspects of a criminal trial.

As petitioner concedes, proceedings in habeas corpus are civil in nature.

We find no case which discusses, in extradition matters, the case of *Griffin v. California,* 380 U.S. 609. However, in *U. S. ex rel. Vitello v. Flood* (1967 CA 2), 374 F.2d 554, the court considered the question of whether admissions allegedly obtained in violation of the rules of *Miranda v. Arizona,* 384 U.S. 435 were admissible in extradition habeas corpus proceedings. The court cited *South Carolina v. Bailey* (1933), 289 U.S. 412 and said at page 557:

> "We conclude, however, that Miranda does not apply to rendition proceedings or hearings on petitions for habeas corpus which are incident thereto. Interstate rendition proceedings are summary in nature and the accused is not entitled to all of the procedural protections of a criminal trial."

The court further said at page 558:

> "There is no sound reason to import *into civil proceedings of this kind* principals analagous to those enunciated in *Miranda v. State of Arizona,* supra, for criminal proceedings." (Emphasis added.)

As this Court said in *Sweeney v. Woodall* (1952), 344 U.S. 86, 97 L. Ed. 114 at page 118 (L. Ed.):

> "The scheme of interstate rendition, as set forth in both the Constitution and the statutes which Congress has enacted to implement the constitution contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him; . . ."

The purpose of extradition proceedings would be defeated if the executive authority of all rendition states is required to hold a hearing prior to the issuance of the extradition warrant and if the demanding state is required to appear and offer proof of the facts set forth in the rendition request.

CONCLUSION.

The present state of the law is (a) that the executive authority of a rendition state is not required to hold a hearing prior to the issuance of an extradition warrant and (b) that habeas corpus proceedings are civil in nature and that due process of law is provided by such proceedings and (c) that rights under the Fifth Amendment are not impaired by holding that the Governor's warrant is prima facie evidence of all the facts recited therein.

We submit that the proceedings in the courts of Ohio were correct in all respects and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN T. CORRIGAN,
Prosecuting Attorney of Cuyahoga County, Ohio,

By SUMNER CANARY,
Assistant Prosecuting Attorney
Criminal Courts Building,
1560 East 21st Street,
Cleveland, Ohio 44114,
Attorneys for Respondent.

APPENDIX.

UNITED STATES CONSTITUTION, ART. IV, SEC. 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

UNITED STATES CODE, TITLE 18, SEC. 3182.

§ 3182. Fugitives from State or Territory to State, District or Territory.

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

OHIO REVISED CODE, SEC. 2963.02.

2963.02. Governor to deliver fugitives from justice.

Subject to sections 2963.01 to 2963.27, inclusive, of the Revised Code, the constitution of the United States and all acts of congress enacted in pursuance thereof, the governor shall have arrested and delivered to the executive authority of any other state of the United States, any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.